

Life Choices

Make important decisions now about your end-of-life needs. Your loved ones will not have to make those decisions for you if you become impaired. Forms are included to communicate your wishes.

With knowledge comes choices



The Attorney General speaks
at the Missouri End-of-Life
Coalition Policy Summit.

Dear Missourians,

As Attorney General, I work to protect the interests of Missourians in all aspects of life. This includes health care decisions and matters surrounding the end of life.

My office partnered with the Missouri End-of-Life Coalition to empower Missourians with knowledge about end-of-life issues and to raise awareness about pain and symptom management.

This revised edition of Life Choices makes improvements

to an already popular publication that has been provided to tens of thousands of Missourians.

You may have signed a living will years ago. Changes in the law make the advance directives form on page 15 of this booklet more effective than a living will, so I encourage you to complete the form.

Talk with your family, health care providers and clergy about how you wish to spend the end of your life. By communicating openly, you will improve the quality of life for yourself and for your family.

Sincerely,

Jeremiah W. (Jay) Nixon
Attorney General of Missouri

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Communicating about the end of life



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Communicating about the end of life

It's often difficult to think about dying, let alone talk about it. But the only way to ensure your wishes are fulfilled is to communicate with clergy, family and physicians.

Putting your wishes in writing can relieve a tremendous burden for your loved ones. Imagine the stress and sadness your family members may experience when you become injured or ill. Now imagine the added burden on them if you have not communicated your wishes.

Having these important conversations now will save heartache down the road.

The way in which you want to die is a very personal decision. Begin by thinking about your personal feelings about your death. A work sheet to help you starts on page 9. Research your options. Talk with your health care provider, minister and family.

Once you have a clear picture of your wishes, share them with your family, friends and doctor. An excellent way to communicate your wishes is to complete an advance directives form on page 15. It includes a durable power of attorney for health care choices and health care choices directive.

This document should not be construed as legal advice or as an endorsement of any particular form. While the form in this booklet can

be completed without using an attorney, you may wish to consult a private attorney.

Keep in mind that even though your wishes are in writing, it may be difficult for others to understand them. That's why it is so critical to talk with your family. Having this conversation will lessen the pain, doubt and anxiety for your loved ones as you near death.

While there is no right way or right time to start a conversation about the end of life with your family, these tips may help you get started:

- Describe someone else's experience.
- Say your attorney urged you to have the conversation.
- Use the work sheets in this booklet.
- Write a letter or make a tape or video describing your wishes. Have your family review it before you talk.

Your family may resist having the conversation; it's often difficult to contemplate the loss of a loved one. Stand your ground about the importance of talking about dying and bring up the consequences of putting off the conversation. It also may help to have someone be your spokesperson and lead the conversation. In the end, you all will have greater peace of mind.

Name_____ Date_____

Completing this work sheet will give you a framework for thinking about what you want at the end of life. Your agent may refer to this work sheet if you become unable to speak for yourself. Use more paper if you need more space. Please note, this is not a legal document and does not have to be filled out to complete your advanced directives.

My values, beliefs and priorities

Which family members and friends are you closest to?

What do you need most for your physical or mental well-being? Being outdoors? Listening to music? Being aware of your surroundings and who is with you? How important are seeing, tasting and touching to you?

Are you spiritual or religious? Would you like a member of the clergy to be with you when you are dying?

LIFE PLANNING WORK SHEET CONTINUED

How would you like to be remembered? What kind of person have you tried to be? Which accomplishments are you most proud of?

Are there cultural or ethnic beliefs and practices that are important to you?

What fears do you have about dying?

What would you like to tell your loved ones before you die?

LIFE PLANNING WORK SHEET CONTINUED

Sedation may be necessary to control pain that may accompany the end of life. Would you want to be sedated even if it makes you drowsy or puts you to sleep much of the time?

Would you be interested in hospice care?

What would you like the last week of your life to be like? Who will be there? Where will you be? What will you eat if you can eat? What would you like your last words or acts to be?

How do you envision your memorial service or funeral? What songs would you like? Which readings? Who would you like to participate?

Would you like to write a letter or make a taped message for your loved ones to open at a future time? Who should receive the letter or tape?

LIFE PLANNING WORK SHEET NOTES

[illegible]

Advance directives

You may become physically or mentally unable to communicate your desires for medical care if you have an accident or become ill. Your family and doctors will better understand your preferences if you have expressed them in writing.

One way to accomplish this is through an advance directives form (starting on page 15) that names a durable power of attorney for health care choices and includes a health care choices directive.

It is important to remember that you have a constitutional right to refuse any medical treatment, including those that prolong your life. You also have the right to name another person, called an agent, to make health care decisions for you if you lose the ability to make your own decisions.

Advance directives allow you to state exactly what treatments you do or do not want if you are unable to communicate your wishes.

Many people have living wills and mistakenly believe this document will communicate their treatment wishes in any situation in which they are incapacitated. Even if you already have a living will, you should consider creating a health care choices directive.

Many living wills apply only when you are near death and do not include the withdrawal or withholding of artificial nutrition and hydration. Health care choices directives address these issues and give specific instructions.

Is a lawyer needed?

The six-page form included in this chapter is designed to be used directly by individuals and meets the requirements of Missouri laws.

However, if you decide to use a lawyer, you can contact the Missouri Bar Lawyer Referral Service (there is a fee):

Jefferson City: 573-636-3635

St. Louis: 314-621-6681

Kansas City: 816-221-9472

Greene County: 417-831-2783

Get forms online

The work sheet and form also can be found on the Attorney General's Web site at ago.mo.gov under the "Forms" link at the bottom of the page.

The six-page advance directives form will help you express your wishes regarding the end of life.

Durable power of attorney for health care choices

The durable power of attorney for health care choices, included in the first part of the form, allows you to appoint another person to make health care decisions that you have not specified in the health care choices directive. The person you appoint is called your agent.

You already may have a power of attorney for business and financial matters. Many people choose separate agents for business and health care and make this known in separate documents.

Your health care agent should be someone who understands your goals and values and you trust to carry out your wishes.

You may choose a family member, spouse, adult child or close friend who is at least 18 years old. Your agent cannot be a doctor, an employee of a doctor, or an owner, operator or employee of a health care facility in which you live, unless you are related. Make sure to ask the person whether he or she is willing to act as your agent, and talk candidly about your wishes so there are no misunderstandings.

Your agent may make decisions for you **only** if you are physically or mentally unable to do so yourself.

Missouri law requires two doctors to declare a person incapacitated, unless you specify otherwise. The durable power of attorney section on the form allows you to choose whether you want one or two doctors to determine whether an agent should make decisions on your behalf.

Health care choices directive

A health care choices directive, included in the second part of the form, allows you to provide clear and convincing proof of whether you want your life lengthened by medical treatment.

When you become unable to make decisions or communicate your wishes, your doctor and agent will make decisions based on what you have expressed in the health care choices directive section of your form.

Give out copies of directive

Give copies of the six-page advance directives form to your doctor, the agent (or agents) named in the durable power of attorney section, and your family, friends and clergy. Have conversations with these people about your health care decisions and ask your doctor to put it in your permanent medical record. Many people travel with copies of their advance directives form.

You also can write the name of your agent on the back of your driver's license with a permanent marker. But you still will need to fill out a form for the advance directive to be recognized.

If you have named an agent, only this person has the legal authority to make health care decisions for you. Tell your family whom you have chosen as your agent. Your agent may wish to talk with your family before making decisions.

Health care providers and your agent must follow the directions given in your advance directive. The only exception is if your request would require a health care provider to break the law. A provider who does not want to follow your directive must help you transfer to a facility where your advance directive will be honored.

An advance directive stays in effect until you die unless you cancel it. If you want to later make changes to your directive, simply initial and date the changes in the margin of your advance directives form.

**DURABLE POWER OF ATTORNEY FOR HEALTH CARE CHOICES
& HEALTH CARE CHOICES DIRECTIVE**

6-PAGE
FORM

Part I. Durable power of attorney for health care choices

I, _____, _____,
Name Social Security number

appoint

_____, _____,
Name Phone

Address

as my agent for health care choices when I am unable to make decisions or communicate my wishes. In the case the person above cannot serve as my agent, or if I am divorced from or legally separated from the agent above, I appoint the person below:

_____, _____,
Name Phone

Address

This alternate agent may make health care decisions for me when I am unable to do so or to communicate my wishes.

This durable power of attorney becomes effective when **two** physicians certify that I am incapacitated and unable to make and communicate health care choices.

You may choose to have one physician, instead of two, determine whether you are incapacitated. If you want to exercise this option — allowing one physician to determine whether you are incapacitated — initial here.

By completing this durable power of attorney, I authorize my agent to make all decisions for me regarding my health care. This includes the power to withdraw any type of health care, treatment or procedure, even if I may die in the process. I expect my agent to follow my health care choices directive. My agent has the power to:

- Consent, refuse or withdraw consent to artificially supplied nutrition and hydration.
- Make all necessary arrangements for health care on my behalf. This includes admitting me to any hospital, psychiatric treatment facility, hospice, nursing home or other health care facility.
- Hire or fire health care personnel on my behalf.
- Request, receive and review my medical and hospital records.
- Take legal action if necessary to do what I have directed.
- Carry out my wishes regarding autopsy and organ donation, and decide what should be done with my body.

My agent under this durable power of attorney will not incur any personal financial liability. The agent also should not be compensated for services performed for me. However, the agent shall be reimbursed for reasonable expenses that are part of my care.

THIS IS A DURABLE POWER OF ATTORNEY AND THE AUTHORITY OF MY ATTORNEY IN FACT, WHEN EFFECTIVE, SHALL NOT TERMINATE OR BE VOID OR VOIDABLE IF I AM OR BECOME DISABLED OR INCAPACITATED OR IN THE EVENT OF LATER UNCERTAINTY AS TO WHETHER I AM DEAD OR ALIVE.

Part II. Health care choices directive

I want those involved in my health care to understand my wishes if I cannot communicate or make decisions on my own. I make this directive to provide clear and convincing proof of my wishes and instructions about my health care and treatment.

If my doctor believes medical treatment will lead to my recovery, I want to have the treatment. I also want to have care and treatment for pain or discomfort even if this treatment might shorten my life, affect my appetite, slow my breathing or be habit-forming.

If I have a terminal illness or condition and there is no reasonable hope I will recover, or if I am persistently unconscious, I direct all of the life-prolonging procedures I have initialed below to be withheld or withdrawn.

I direct the following treatments to be withheld or withdrawn:

- ☐ Surgery or other invasive procedures
- ☐ Cardiopulmonary resuscitation (CPR) to restart my heart or breathing
- ☐ Antibiotics
- ☐ Dialysis
- ☐ Mechanical ventilator (respirator)
- ☐ Artificially supplied nutrition and hydration (including tube feeding)
- ☐ Chemotherapy
- ☐ Radiation therapy
- ☐ All other “life-prolonging” medical treatments or surgeries that are merely intended to keep me alive without reasonable hope of making me better or curing my illness or injury.

I direct the donation of my organs or tissues. I realize my body may need to be maintained artificially after my death until my organs can be removed.

☐ Yes ☐ No ☐ I do not want to address this question now.

I also give the following directions regarding my health care:

Optional: Describe what you consider an acceptable quality of life. For example, being able to recognize my loved ones, make decisions, communicate or feed yourself.

Attach extra pages if necessary. Sign and date the attached pages.

Make sure to talk about this directive and your wishes with your agent, your doctors, family, friends and clergy. Give each of them a copy of the directive. Bring a copy with you when you go to a hospital or other health care facility. Keep the original with your important papers.

Part III. Relationship between health care choices directive and durable power of attorney for health care choices

As I have executed the health care choices directive and durable power of attorney for health care choices, I trust and encourage my agent to:

- First, follow my wishes as expressed in the directive or otherwise from knowledge about me or having had discussions with me about making choices regarding life-prolonging medical treatment.
- Second, if my agent does not know my wishes for a specific decision, but my agent has evidence of what I might want, my agent can try to figure out how I would decide. This is called substituted judgment and requires my agent imagining himself or herself in my position. My agent should consider my values, religious beliefs, past choices and past statements I have made. The aim is to choose as I probably would choose, even if it is not what my agent would choose for himself or herself.
- Third, if my agent has very little or no knowledge of what I would want, then my agent and the doctors will have to make a decision based on what a reasonable person in the same situation would decide. This is called making decisions in my best interest. I have confidence in my agent's ability to make decisions in my best interest if my agent does not have enough information to follow my preferences or use substituted judgment, and if this is the case, I authorize my agent to make decisions that might even be contrary to my directive in his or her best judgment.
- Finally, if the durable power of attorney for health care choices is determined to be ineffective, or if my agent is unable to serve, the health care choices directive is intended to be used on its own as firm instructions to my health care providers regarding life-prolonging procedures.

Sign this form before two witnesses who are not related to you or financially connected to your estate.

IN WITNESS THEREOF, I have executed this document on _____, _____, _____.
MONTH DAY YEAR

Signature _____

Print name _____ SS No. _____

Address _____

The person who signed this document is of sound mind and voluntarily signed this document in our presence. Each of the undersigned witnesses is at least 18 years of age.

Signature _____ Signature _____

Print name _____ Print name _____

Address _____ Address _____

Notarization required

STATE OF MISSOURI)
) SS
COUNTY OF _____)

On this ____ day of _____, in the year of _____, personally appeared before me the person signing, known by me to be the person who completed this document and acknowledged it as his/her free act and deed.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal in the County of _____, State of Missouri, the day and year first above written.

Notary public's signature

Living wills

By creating a living will, you instruct health care providers to withhold or withdraw medical treatment under certain circumstances. Missouri law authorizes the creation of living wills that use a statement or declaration in this form:

“I have the primary right to make my own decisions concerning treatment that might unduly prolong the dying process. By this declaration I express to my physician, family and friends my intent. If I should have a terminal condition it is my desire that my dying not be prolonged by administration of death-prolonging procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw medical procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain. It is not my intent to authorize affirmative or deliberate acts or omissions to shorten my life, rather only to permit the natural process of dying.”

To create a living will, you must be 18 or older and have two witnesses who also are at least 18 years old. You and your two witnesses must sign the living will. The witnesses cannot be family members, beneficiaries to your estate or financially responsible for your medical care.

Living wills do have limitations. They apply only to near death situations in which the patient will die shortly without medical intervention. **Missouri law prohibits a living will from being used to withhold or withdraw artificially supplied nutrition and hydration.**

To give instructions beyond what a living will allows, complete the advance directives form that starts on page 15.

Once you complete a living will, make sure to give copies to your doctors, family members and the person you have chosen as your power of attorney for health care.

If you decide you want to cancel your living will, you can do so either verbally or in writing. Health care providers are required to note a revocation of a living will in your medical record.

Understanding life-sustaining treatments

Your doctor can answer your questions about the types of treatments and medical interventions that may lengthen your life and delay death.

Understanding these treatments and interventions will help you create your advance directives. Life-sustaining treatments are described below. However, your doctor may more fully explain them to you.

Cardiopulmonary resuscitation

CPR is performed when a patient's heart or lungs suddenly stop working. It usually includes chest compressions, the administration of drugs and/or electric shock to restore the heartbeat, and a tube placed in the windpipe for breathing.

A doctor sometimes will write a do-not-resuscitate (DNR) order instructing other health care providers not to attempt CPR in the case of cardiac or respiratory arrest. In contrast to advance directives,

the patient or health care agent cannot prepare the DNR order.

Every health care facility has its own policy on when to use DNR orders. Emergency medical services have separate forms. Check with your local ambulance service and hospital for information.

Respirator (also called a ventilator)

This machine breathes for a person unable to breathe naturally by moving air into the lungs. Patients recovering from surgery or illness sometimes are placed on a ventilator to help them breathe until they can breathe on their own.

Artificial nutrition and hydration

A patient who is unable to eat or drink may receive nutrition and fluids directly or indirectly into his or her stomach by a feeding tube or through an intravenous line. This artificial method of nutrition and hydration ordinarily is used when a person temporarily loses the ability to eat or digest food or water.

Pain management

You should not have to live in pain, which is the No. 1 reason people seek medical care. Insist on getting the relief you need by talking with family and health care providers.

You are not alone if you are searching for ways to control your pain. Pain management is a major concern for people with serious illnesses or injuries. In a 1999 Gallup survey, nine out of 10 Americans said they suffered pain at least once a month, and 42 percent reported feeling pain every single day.

Unrelieved pain can be crippling: if you are in pain you may become depressed, have trouble sleeping, fall, have trouble thinking clearly, lose your appetite and lose the ability to move around.

Doctors now have the tools to relieve pain for more than 90 percent of patients. Yet, research

shows many people do not receive the pain relief they need, especially residents in nursing homes. One study found 26 percent of nursing home residents who have daily pain receive no pain medication.

Some patients refuse narcotic pain relievers because they fear they will become addicted. However, doctors say addiction is rare when pain medication is prescribed and used properly. Fear of addiction should not keep you from using pain relievers.

You may choose to make your wishes known regarding pain management in a written advance directive. See page 17.

You also can call upon hospice care teams that are specially trained in managing pain and will work on your behalf. You may have to speak up for yourself more than you would like; just remember, pain relief is your goal and it is possible.

Hospice care

In a recent survey, 70 percent of Americans said they would prefer to be cared for and die at home, but in Missouri less than 30 percent of people spend their final days in their homes. In some cases, a hospital or nursing home is the most appropriate place for a person to die, such as when advanced medical technology is necessary. But most people who die in hospitals and nursing homes could die at home if support were available.

In recent years, more Missourians have had the opportunity to die at home or in a homelike setting because of hospice care. Hospice care focuses on relieving the symptoms of persons who are dying rather than trying to cure them. Hospice accepts death as a natural part of life.

A team of care providers creates a plan for the patient to control pain and allow them to live life to the fullest until they die. The team usually includes a doctor, nurse, counselors, clergy, volunteers and aides. Hospice care can be provided wherever the patient calls home — the patient's own home, a nursing home, a hospital, assisted living or a hospice facility.

The hospice team addresses not only physical symptoms, but also emotional,

How to find a hospice

To find a nearby hospice, contact the Missouri Hospice and Palliative Care Association.

- Call: 816-524-9505
- Click: www.mohospice.org

psychological and spiritual needs. The patient's family also receives care in many ways including respite care that gives family members and other caregivers a break. Counselors and social workers also spend time with the family. This support continues for up to a year after the patient dies.

Medicare, private health insurance and Medicaid usually cover the cost of hospice care for eligible patients. To qualify, a patient must have a life expectancy of six months or less and agree to forgo curative medical treatments. Many hospices receive donations from the community and offer services based on need, rather than a patient's ability to pay.

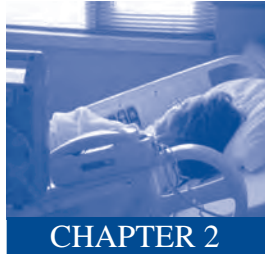
Studies show patients benefit most from hospice care if they receive care for at least 60 days, thus getting the pain and symptom management they need as well as psychological and spiritual support. However, most patients receive hospice care for about 36 days and many for one week or less.

CHOOSING HOSPICE CARE

To choose a hospice, begin by talking to people you trust who are familiar with area hospice programs. This may include your health care provider, minister and friends. Call representatives of several hospices, if possible. Here are some questions to ask:

- What services do you provide?
- What kind of support do you give to the family or caregiver?
- What role does the attending doctor and hospice play?
- What do your volunteers do?
- How do you work to keep the patient comfortable?
- How are services provided after hours?
- How and where do you provide short-term inpatient care?
- Do you provide care in a nursing home or long-term care facility?

Financial considerations



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Financial considerations

Wills

Creating a will allows you to plan for your family's care and decide who will receive your estate after you die.

Your estate includes all property and cash assets owned at the time of death. This includes bank accounts, land, furniture, buildings, cars, stocks and bonds, proceeds of life insurance payable to the estate, and pension plan benefits payable to one's estate.

By creating a will, you can lessen the taxes that may be included in the transfer of your estate. A will also gives guidance to the probate court on the distribution of property and payment of debts.

In a will, you can name a guardian for your minor children, thus providing a means for caring for the children without court involvement. You also can set up a trust for your family. If you die without a will, the property you owned as an individual will go to your close relatives and sometimes

Seeking legal help

Information contained in this chapter is not intended to replace advice from a private lawyer. Legal advice is recommended for preparation of the documents described.

If you need to find a lawyer in your area, you can contact the Missouri Bar Lawyer Referral Service (there is a fee):

Jefferson City: 573-636-3635

St. Louis: 314-621-6681

Kansas City: 816-221-9472

Greene County: 417-831-2783

distant relatives.

In the rare case that no relatives can be found, your estate becomes state property.

Anyone who is 18 years old and of sound mind may make a will in Missouri. To be valid in Missouri, a will must be in writing and signed by the maker and two witnesses. The witnesses cannot receive property under the will.

SELF-PROVING CLAUSE

One option that can speed up the probate process is to add what is called a self-proving clause. You will need to have two witnesses sign your will in front of a notary. Sometimes witnesses to a will have died or are hard to locate, which delays probate. By adding this section, your will becomes self-proving, which means witnesses do not need to appear in probate court.

Your personal representative

Your will must include the name of a person you choose to be your personal representative to administer your estate. (This formerly was called the executor.)

You may choose one or more persons who are 18 or older or an institution such as a bank or trust company. It is a good idea to name an alternate personal representative in case your first choice dies before you do or cannot manage your estate for other reasons.

Who receives your estate

Under Missouri law you may decide to a great extent who receives your property. However a surviving spouse may petition the court to receive more than you specified in your will using what is called “right of election.” With this right, your spouse may ask the probate division for one-third of the estate if you have children or one-half of the estate if you do not.

The property you jointly own with your spouse is not included in your will. This property automatically passes to the surviving spouse without going through probate court.

Thus, joint ownership makes distribution of one’s estate simpler after death. Be cautious when using joint ownership since control of the property is shared between the owners.

Living trusts

Establishing a revocable living trust allows a person to transfer property upon death and bypass the probate process, which involves time, publicity and expense. The creator of the living trust usually serves as the trustee and beneficiary until death or incapacity, when successor trustees and beneficiaries take over.

When personal property is included in a living trust, the ownership documents of the property must be changed. For example, if you want to include your home in the trust, you must change the deed of the property to show the trust, rather than you, as the actual owner.

A revocable living trust does not need to be signed by witnesses, but it must be notarized.

Non-probate transfers

After your death, your property may be legally transferred to beneficiaries you have named without going through probate court, if you designate the property in a certain way.

Pay on death (POD) designations are used for property such as bank accounts; transfer on death (TOD) designations are used for items such as brokerage accounts and titled motor vehicles; and beneficiary deeds are used for real estate.

These designations may be revoked by the owner, and the

consent of the beneficiary is not required for the owner to mortgage or sell the property. Because these designations do not describe in detail the order in which the property will be passed among the intended beneficiaries, they are not intended to be substitutes for a will.

Real estate transfers

Transferring property is common among seniors for several reasons. Before selling property, transferring a title or adding a name to a title, seniors should consider some common situations:

- A person who has deeded his or her house to another person can be forced to move out against his or her will. The person to whom the house is deeded may sell the house whether the person living there agrees to it or not.
- Some seniors want to add a person to their deed with equal property share and a right of survivorship. To make this happen the deed must say “as joint tenants with right of survivorship.”
- If joint tenants are on the deed, one tenant cannot sell the property without the other’s consent. When one tenant dies, the other automatically retains the property.

- To sell property, the current owner’s name must be on the deed. If one of the names on the title is of someone who has died, the name will have to be removed before a sale can proceed. An attorney can help with this.

Power of attorney

If it becomes difficult for you to take care of your personal business because of an illness or injury, you may want to consider giving someone your power of attorney.

This means you give someone written authority to act in your name with regard to your financial and business affairs. This is usually a friend or a relative, not a lawyer. The person is called your “attorney in fact.”

A power of attorney needs to be in writing and should state your name and the name of the person who will be your attorney in fact. It should list the specific powers you are giving to the attorney in fact.

Typically, attorneys in fact handle financial affairs such as cashing and depositing checks, paying bills and buying groceries. Be careful about who you choose, because this person will have an important role in your life.

Durable power of attorney

A power of attorney, like the one described above, becomes invalid if you become incompetent to make decisions or when you die. If you wish for your attorney in fact to continue managing your affairs after you become incapacitated you should consider a durable power of attorney.

The document should be titled “durable power of attorney” and should state that the power you are giving your attorney in fact is “durable” and will continue if you become disabled or incapacitated. Sign and date the document and have it notarized.

If you want to include real estate matters, you will need to file the document with your local recorder of deeds.

Personal custodian

Another way to allow someone to take care of your personal business is to name a personal custodian. The Missouri personal custodian law gives you the means to transfer care of your personal property and real estate to another person. You still own the property, but the custodian manages it.

The personal custodianship remains in effect if you become incapacitated.

You will need to consult an attorney to set up a personal custodianship.

Guardianship and conservatorship

In some cases, the court names a personal guardian and conservator to take care of a person who cannot properly manage his or her finances, health and safety. A conservator manages financial resources, while a guardian takes care of personal needs such as medical treatment.

The guardian and conservator do not have personal financial responsibility for the person for whom they are caring. If you believe your loved one needs a conservator or guardian, you may need to pay court costs, hire a lawyer and post a bond.

A court proceeding will determine whether the person needs a guardian or conservator.

When your loved one dies



CHAPTER 3

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When your loved one dies

Missouri laws regarding funerals strive to protect citizens at the time of a loved one's death. If your loved one dies and you must make funeral and cemetery arrangements, begin by finding out if the deceased left instructions for the funeral or cemetery services. If funeral arrangements exist they must be followed.

Funeral arrangements

Your loved one may have pre-paid for the funeral and burial. If not, you may be asked to sign a contract when ordering services.

The contract usually binds the person who signs it to pay the charges, but some of this money may be reimbursed from the estate or other sources. If the estate does not have funds to pay the funeral costs, the person who signed the contract may have to pay. You also should check to see if your loved one had any death benefits to help cover the funeral costs.

Funeral directors must follow pricing rules set forth by the Federal Trade Commission including:

- Offering accurate price information over the phone.
- Providing a written, itemized price list if you inquire in person.
- Giving purchasers a written statement with the total cost and a breakdown of each item or service.
- Not requiring you to buy certain goods or services to receive others.

Pre-paid funerals

Today, many older Missourians are considering pre-need funeral plans. A pre-need funeral plan is an agreement in which a seller agrees to provide funeral services and merchandise at the time of the buyer's death. The costs may be paid in installments or in one lump sum.

Although there are many honest and reputable funeral directors who sell pre-need funeral plans, there also are unscrupulous con artists who will take your money with no intention of fulfilling their end of the agreement.

So, how can you be sure a pre-need funeral plan is a good one?

Know your pre-need funeral plan

If you have any questions, get answers from the seller before you buy.

Beware of any plan that does not specify exactly what you will receive. The law requires that pre-need funeral contracts specify in detail the merchandise and services that are to be provided.

By law funeral directors also must provide written price lists for all merchandise and services they offer. Shop around. Some plans guarantee a fixed price; others don't.

Know who is selling the plan and who is honoring it

Pre-need funeral plans may be sold directly by funeral homes or by other companies that have arranged to have a funeral home in your area service the plan.

Sellers are required by law to have a written contract with the funeral home to ensure there are arrangements. Ask to see a copy of this contract or check with the funeral home.

Be certain the funeral home designated in the plan is acceptable to you, and your family knows of its obligation to honor the plan.

Missouri law gives you the right to cancel a pre-need funeral plan at any time unless at the time of sale you choose to give up that right. You should consider giving up that right only if you are seeking public assistance. You may wish to consult with a representative of the public assistance agency.

With the right to cancel, if you default on payments, you are entitled to recover any amount you paid into the plan, minus the amount the seller is allowed to keep — the first 20 percent of the purchase price — usually without interest depending on the contract.

Also remember, all pre-need funeral plans are subject to a 30-day right to cancel under Missouri law.

To be sure a prearranged funeral plan is best for you, you may want to consider other options such as buying additional insurance or arranging with a mortuary for a certain type of funeral service without prepayment.

Know where your money goes

By state law, all payments made on a pre-need funeral plan, minus the amount the seller is entitled to keep, must go into a pre-need trust. Those funds generally must be maintained in that trust until you die.

Make sure your funeral plan identifies the pre-need trust into which your payments will be deposited, including the name and address of the trustee.

You have a right to receive from the seller, on written request, a written statement of all deposits made into the trust on your behalf. Making such a request is a good way to determine that your payments are going into the trust and not into the seller's pocket. You also may want to contact the trustee directly.

Embalming

Missouri law does not require embalming in most instances. However, after 24 hours an unembalmed body must be refrigerated or placed in an airtight sealed metal or metal-lined casket or box. For an open casket funeral, you may wish to have the remains embalmed to temporarily preserve the body by replacing bodily fluids with preservative chemicals. State law **does** require embalming if the person died of a communicable disease and the body is not buried or cremated within 24 hours.

Federal law requires a funeral home to obtain authorization before embalming a body.

Cremation

Missouri law allows cremation of a body. A casket is not required for cremation, which may lower your funeral cost. Funeral directors must provide an unfinished wood box or alternative container for cremation.

Funeral notices

Many newspapers include information on deaths. Some papers automatically include the names of people who have died with information from death certificates. Most newspapers also print obituaries using information submitted by the family. These articles include information on the person's family, business life, affiliations, funeral service and suggestions for remembrances.

Get info or file a complaint

- **Write:** State Board of Embalmers and Funeral Directors
3605 Missouri Blvd.
P.O. Box 423
Jefferson City, MO 65102
- **Call:** 573-751-0813

Benefits payable upon death

You may be eligible for benefits when your loved one dies.

Consider these sources:

- Social Security makes payments to an eligible surviving widow, widower or entitled child.
- Many employers provide a death benefit for employees.
- Qualifying veterans may receive death benefits from the Veteran's Administration.
- Your loved one may have purchased funeral insurance.
- Some civic or employment organizations provide death-related benefits.
- The deceased may have joined a memorial society that provides low-cost funeral options through a specific funeral home.
- Benefits may be available through the Missouri Department of Labor and Industrial Relations if the person died on the job. Click on www.dolir.mo.gov.
- The Crime Victims' Compensation Fund may provide benefits if the death resulted from a criminal act. This fund is administered by the Department of Labor and Industrial Relations at www.dolir.mo.gov.

Obtaining a death certificate

You probably will need a copy of the deceased's death certificate to settle the estate. A funeral director usually will help you with this.

Death certificates also are available at most local health departments. Or you can get the death certificate by writing:

Missouri Department of Health
and Senior Services
Bureau of Vital Records
P.O. Box 570
Jefferson City, MO 65102

You can download an application for a death certificate at www.dhss.mo.gov/BirthAndDeathRecords/ or include in a letter the deceased's full name at death, date of death, place of death, your relationship to the person and the reason for requesting the record. A fee of \$13 per copy must accompany the request. Make your check or money order payable to Missouri Department of Health and Senior Services. **Do not send cash.** Allow about two weeks for processing.

For faster service, contact VitalChek by calling toll-free 877-817-7363 or visiting www.vitalchek.com.

Military honors

Missouri veterans are eligible for the Missouri military funeral honors program at no cost. The honors ceremony consists of the firing of three rifle volleys, sounding of "Taps" and flag folding and presentation. Notify your funeral director when making funeral arrangements if you would like military honors.

Safety concerns

When someone who lived alone dies, it is important to safeguard their property while the estate is being settled. Make sure to stop newspapers and the mail and make it appear that the house is occupied.

A warning: Ask the police or sheriff's department to watch the house during the funeral. Burglars sometimes strike.

Financial matters

The bills of the person who died still will need to be paid. If it will be difficult to make payments, contact the creditors. Most businesses will work with you.

- Pay utility bills to ensure continued service.
- Before paying medical bills, find out whether Medicare, Medicaid or private insurance will cover the bills.
- Continue paying on debts such as mortgages, cars or credit cards.

If the deceased had a bank account without a co-signer, money may not be accessible. Family and friends might need to cover the bills. The estate usually will reimburse these costs. If the deceased had a joint bank account, the co-signer normally will have access to the funds.

Stocks and bonds

U.S. savings bonds may be redeemed immediately after a person dies. Any person whose name appears with the deceased's name on the bonds may redeem the bonds.

Selling the stocks of the deceased requires certain documentation. A stockbroker or legal or financial adviser can help you with this.

Safe deposit boxes

When a person who has a safe deposit box dies, the financial institution where the box is located is required to open the box at the request of interested parties.

Missouri law requires the bank or other institution to deliver a will found in the safe deposit box to probate court. Life insurance policies must be given to the beneficiaries and funeral instructions delivered to the appropriate person.

Life insurance

Proceeds from a life insurance policy are usually paid to the beneficiaries within a few weeks after forms are filed. The death certificate, insurance policy and a form requesting the funds must be mailed to the company. Contact the insurance company for more information.

Property inventory

As soon as possible, make a detailed list of all property of the deceased and the fair market value of each item. The list should reflect any items that are joint property, if the deceased was married. A professional appraiser may be helpful. Include real estate, stocks and bonds, cash in financial institutions, insurance benefits, vehicles, boats, furniture and furnishings, jewelry, business interests and employment or retirement benefits.

Transfer of property

Property may be transferred through probate court. The court works to protect the people who have an interest in the deceased's property. Probate proceedings are not always necessary. Depending on an array of factors, probate may be necessary. Call an attorney for help.

Taxes

When a person dies, federal income taxes still must be paid by the April 15 deadline. The Internal Revenue Service has a free booklet to help prepare the deceased's tax return called "Tax Information for Survivors and Executors and Administrators," Publication 559, which is posted at www.irs.gov. Property taxes also must be paid on time.

Organ, body donation

Organ donation

You may wish to help others by donating your organs upon your death.

When you die, health care staff will ask your family whether you wanted to donate your organs, so discuss this with your loved ones.

Missouri law does not require your request to donate your organs to be in writing. You simply need to tell your agent or family. However, if you want everyone to be clear about your wishes, put it in writing.

You may make your intention to donate your organs known by signing the back of your driver's license and asking a witness to sign it.

The Missouri Organ Donor Registry maintains a list of people who have signed up to donate organs, tissue and eyes. Health care providers can check this list to see if you wanted to be a donor. A registry enrollment application is on the next page.

For more information, call the Missouri Department of Health and Senior Services at 888-497-4564 or go to www.dhss.mo.gov/OrganDonor/.

Under Missouri law, your family, spouse or guardian may choose to donate your organs, even if you had not expressed a decision either in support or opposition of donation. However, if you state before your death you do not want to donate your organs, your family must comply with this wish.

Body donation

Medical schools in Missouri accept donations of bodies for science, research or education. Each program differs slightly, and most programs charge the estate for transportation. It is best to prearrange any body donation by contacting the medical school.



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
DIVISION OF CHRONIC DISEASE PREVENTION AND HEALTH PROMOTION



MISSOURI ORGAN DONOR REGISTRY ENROLLMENT APPLICATION

The **Missouri Organ Donor Registry** is a confidential list of potential organ, tissue and eye donors **maintained by the Missouri Department of Health and Senior Services**.

Would you like to be an organ, tissue and eye donor? Signing up with the Missouri Organ Donor Registry is one way to do this. Upon your death, your family will be asked if you wanted to be a donor. Health care staff can check the registry and let your family know if you had signed up. Registry information is an easy way to let your family know your wishes.

You are not required to be on the registry to be a donor. Talking about your wishes with your loved ones is the best way to ensure your family knows what to do. However, signing up for the registry will also help because you have put it in writing. Give your family the gift of knowing your wishes. Please consider joining the registry and talk with your family today.

For more information — Call the Missouri Organ Donor Program toll-free — 888-497-4564

Complete the information to be *added to or removed from* the Missouri Organ Donor Registry

PARTICIPANT'S
NAME _____
LAST FIRST MIDDLE SUFFIX

ADDRESS _____ MISSOURI
STREET CITY ZIP CODE

COUNTY OF RESIDENCE _____ GENDER ☐ Male ☐ Female

DATE OF BIRTH ____ / ____ / ____ SOCIAL SECURITY NO. or DRIVER'S LICENSE NO. _____
MONTH DAY YEAR

Do you want your name included in the Missouri Organ Donor Registry?

- ☐ **Yes**, I want my name and information included in the Missouri Organ Donor Registry.
- ☐ **No**, Please remove my name and information from the Missouri Organ Donor Registry.

PARTICIPANT'S SIGNATURE _____ DATE _____

WITNESS (Required for all applicants.) _____ DATE _____
If participant is under the age of 18, a parent/guardian must sign as witness.)

Fax or mail completed form to:
Missouri Organ Donor Program
Missouri Department of Health and Senior Services
P.O. Box 570, Jefferson City, MO 65102-0570

Phone (toll-free) 888-497-4564
or Fax 573-522-2899

A letter of confirmation will be mailed to you within 30 days of receipt in the Missouri Organ Donor Program.

Resources



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Special recognition; Where to find more information

Thank you to the Missouri End-of-Life Coalition for assistance with the creation of this brochure. More information is available in several publications and Web sites including:

- *Senior Citizens Handbook, Laws and Programs Affecting Senior Citizens in Missouri*: Legal Services of Eastern Missouri, St. Louis. 314-534-4200. www.lsem.org.
- *Durable Power of Attorney for Health Care Choices and Health Care Choices Directive*: Community Alliance for Compassionate Care, Springfield, Mo. 417-865-4501. www.missouriendoflife.com.
- *Planning for Health Care Decision Making*: Turnbull Law Office, Jefferson City, Mo. 573-634-2910.
- AARP: www.aarp.org
- Aging with Dignity: www.agingwithdignity.org
- Center for Practical Bioethics: www.practicalbioethics.org
- Children's Hospice International: www.chionline.org
- Missouri End-of-Life Coalition: www.mo-endoflife.org
- Missouri Bar Association: www.mobar.org
- Missouri Department of Health and Senior Services: www.dhss.mo.gov
- Missouri Hospice and Palliative Care Association: www.mohospice.org
- Missouri Revised Statutes: www.moga.mo.gov
- National Center on Elder Abuse: www.elderabusecenter.org
- National Hospice and Palliative Care Organization: www.caringinfo.org
- Senior Link of Kansas City/St. Joseph: www.seniorlink.org
- WidowNet: www.WidowNet.org

Terms

Advance directive: A written document that states a person's wishes regarding his or her medical care when the person is incapacitated or cannot communicate.

Artificial nutrition, hydration: Nutrition and fluids delivered through a feeding tube or intravenous line.

Attorney in fact: A person appointed by another individual to act or make decisions on his or her behalf. This term, when used on the Missouri driver's license, is synonymous with durable power of attorney for health care choices.

Beneficiary deed: A document stating to whom a person's principal residence will pass upon death.

Conservator: A person appointed by a court to manage the financial resources of an individual who is unable to do so himself or herself.

Cardiopulmonary resuscitation (CPR): A medical procedure performed when a person's heart or lungs stop that usually includes chest compressions, the administration of drugs or electric shock to restore the heartbeat, and a tube placed in the windpipe for breathing.

Durable power of attorney: A document that states an individual gives another person authority to manage his or her business or financial affairs, even if the

individual granting the authority becomes disabled, incapacitated or unable to communicate.

Durable power of attorney for health care choices: A document in which a person appoints another individual to make health care decisions for him or her when the person granting this authority becomes incapacitated or unable to communicate.

Guardian: A person appointed by a court to take care of the personal needs of a person who is unable to do so himself or herself.

Health care agent: A person appointed by another individual to make health care decisions for him or her when the individual is incapacitated or unable to communicate.

Health care choices directive: A document designed to communicate a person's wishes regarding life-sustaining medical treatment when the person is incapacitated or unable to communicate.

Hospice care: A philosophy of care that focuses on relieving the symptoms of a person who is dying rather than trying to cure them, with care provided by a team of medical care providers, counselors and volunteers.

Living trust: A document naming a trustee and beneficiary of property that is used during a person's lifetime and upon death.

Living will: A document that instructs health care providers to withhold or withdraw medical treatment under certain circumstances when a person is near death.

Organ donation: The giving of one's organs, tissue or eyes to an organization that in turn provides the organs to individuals who need a transplant.

Personal custodian: A person designated by another individual to care for his or her personal property and real estate even if the individual who granted this authority becomes incapacitated.

Personal representative for will: A person named in a will to administer the estate of the maker of the will.

Power of attorney: A document stating an individual has the authority to act on behalf of another person in regard to financial or business affairs.

Probate court: A court that has jurisdiction over wills and distribution of property and assets of people who are deceased.

Respirator/ventilator: A machine that moves air in and out of the lungs for a person who is unable to breathe naturally.

Self-proving will: A will signed by two witnesses and notarized that includes specific wording defined by state law.

Will: A document stating how a person wants his or her property and cash assets distributed and who should be the guardian of his or her minor children upon the person's death.



Where to get copies of Life Choices

Contact the Attorney General's Office to get a free copy of Life Choices:

- Order online: **ago.mo.gov/publications/**
- Call the Consumer Protection Hotline: **800-392-8222**
- E-mail us: **ag@ago.mo.gov**

Life Choices also can be found on the Attorney General's Web site at ago.mo.gov/publications/

Use of forms and information

The forms and information in Life Choices may be copied and duplicated for use by consumers.



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